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April 6, 2022

VIA ECF

Honorable Stewart D. Aaron
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Application GRANTED. Plaintiff is warned that failure to comply with the Court's Orders may result in the imposition of sanctions, up to and including a recommendation to the District Judge that his case be dismissed. SO ORDERED.

Re: *Najhim Luke v. C.O. Khalid*,
21-CV-05137 (RA) (SDA)

Dated: April 7, 2022

A handwritten signature in blue ink, appearing to read "Jeff Frank".

Your Honor:

I am an Assistant Corporation Counsel in the Office of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, and the attorney representing defendant Correction Officer ("CO") Aamir Khalid in the above-referenced matter. I write to respectfully: (1) provide a status update pursuant to the Court's March 15, 2022 Order (Docket Entry ("DE") No. 30); and (2) request an additional four weeks, until May 13, 2022, for the parties to either file the anticipated stipulation or provide another status update.

By way of background, on March 14, 2022, defendant filed a letter motion informing the Court that during a telephone call on March 11, 2022 plaintiff informed the undersigned that he no longer wishes to proceed with this lawsuit. (DE No. 29) On March 15, 2022, the Court issued an Order adjourning all discovery deadlines *sine die* and directing the parties to file a joint letter as to the status of the anticipated stipulation of voluntary dismissal by April 15, 2022. (DE No. 30) On March 16, 2022, I mailed plaintiff the Court's March 15, 2022 Order, a Stipulation of Voluntary Dismissal for his signature, and a letter explaining where plaintiff should sign and the importance of promptly returning the partially signed stipulation by mail.

Between March 23, 2022 and April 6, 2022, I attempted to schedule a telephone call with plaintiff so that I could confirm that he received the stipulation and to ask whether and when he would mail his executed copy of the stipulation to this Office. On April 6, 2022, however, plaintiff's counselor at George R. Vierno Center ("GRVC") informed the undersigned that plaintiff refused to come to the phone. I asked the counselor to inform plaintiff that the Court had ordered both parties to file a joint status update by April 15, 2022. I also asked the counselor to inform plaintiff that, should plaintiff continue to refuse to participate in a phone call, I would inform the Court. Because plaintiff refuses to speak with the undersigned, this letter is not filed jointly.

As of this writing, GRVC has not advised the undersigned as to any changes in plaintiff's willingness to speak with me on the phone. Therefore, defendant respectfully requests an additional four weeks, from April 15, 2022 until May 13, 2022, to file the anticipated stipulation. During that time, I will regularly communicate with GRVC in an attempt to speak with plaintiff. Should plaintiff continue to refuse to speak with the undersigned, defendant will promptly inform the Court of the same in a subsequent status letter on or before May 13, 2022.

Should plaintiff continue to refuse to speak with the undersigned and also continue to fail to comply with the Court's January 13, 2022 Scheduling Order (DE No. 28) directing him to serve an authorization for the release of his medical records, defendant will move for dismissal for failure to comply with this Court's Orders, pursuant to Fed. R. Civ. P. 37(b)(2)(A)(v). *See Consol. RNC Cases*, 2009 U.S. Dist. LEXIS 40293, at *33-40 (S.D.N.Y. Jan. 8, 2009) (holding, where plaintiff failed for three to four months to comply with an Order to produce a release for medical records, that dismissal of plaintiff's claims for physical injury was an appropriate sanction); *see also Taylor v. City of New York*, 19 Civ. 6754 (KPF) 2020 U.S. Dist. LEXIS 209279, at **16-17 (S.D.N.Y. Nov. 9, 2020) (granting defendants' motion to compel plaintiff to provide a list of medical and mental health providers, as well as a release for each provider's records).

Accordingly, defendant respectfully requests that the Court extend until May 13, 2022, the parties' time to file the anticipated stipulation or provide a status update.

We thank the Court for its consideration of this matter.

Respectfully submitted,



Jeffrey F. Frank
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Special Federal Litigation Division

cc: **VIA FIRST CLASS MAIL**
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